

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**J.D. Wollrab,
d/b/a Linn Hollow Mobile Home Park
Washington County**

ADMINISTRATIVE ORDER

NO. 2008-AQ-41
2008-SW-34

TO: J.D. Wollrab
Linn Hollow Mobile Home Park
2880 – 180th Street
Ainsworth, Iowa 52201

I. SUMMARY

This administrative order is entered for the purpose of resolving solid waste and air quality violations that have occurred near Washington, Iowa.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:

Kurt Levetzow
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison
Washington, Iowa 52352
Phone: 515/281-4801

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On August 29, 2007, DNR Field Office 6 personnel Ryan Stouder and Kurt Levetzow were driving south of Washington, Iowa, on Highway W-55 when they observed a plume of black smoke coming from the Linn Hollow Mobile Home Park (the site). They went to the site and observed a large pile of solid waste on fire near the lagoon on the property. A man who identified himself as the future park manager came over and spoke with the DNR personnel. He stated that the material on fire in the burn pile was wood from a recently demolished mobile home. He also stated that at least two more mobile homes were scheduled to be demolished and burned in the same manner. When the DNR personnel asked who had directed the burning of the demolition waste, he stated that J.D. Wollrab had instructed him to burn the waste material. A September 5, 2007, Notice of Violation letter was sent by DNR Field Office No. 6 to J.D. Wollrab, citing the violations and explaining the prohibitions against illegal open dumping and illegal open burning.

2. J.D. Wollrab has been sited previously by DNR for illegal open dumping and illegal open burning at this site. A May 1, 2006, Notice of Violation letter was sent by DNR Field Office No. 6 to J.D. Wollrab following a site inspection. During the site inspection, DNR personnel observed a burn pile near the lagoon at the site. The burn pile contained household items and included a microwave oven, couch or chair springs, an entrance door, and cans and bottles.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of tires is specifically prohibited. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

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4. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that J.D. Wollrab, d/b/a Linn Hollow Mobile Home Park, do the following:

1. Pay a penalty of \$1,000.00 (one thousand dollars) within 30 days of the date this order is signed by the director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$1,000.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – J.D. Wollrab, d/b/a Linn Hollow Mobile Home Park, has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$500.00 is assessed for this factor.

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Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The open burning of trade waste is specifically prohibited. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$200.00 is assessed for this factor.

Culpability – J.D. Wollrab, d/b/a Linn Hollow Mobile Home Park, has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$300.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 567 IAC 7.5(1), a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order.



Richard A. Leopold, DIRECTOR
Iowa Department of Natural Resources

Dated this 8 day of
Oct, 2008.

Washington County Air Quality file; Anne Preziosi; Field Office No. 6; VII.C.1